

**Suspend the Rules and Pass the Bill, H.R. 3448, with An Amendment**

**(The amendment strikes all after the enacting clause and inserts a new text)**

113TH CONGRESS  
1ST SESSION

# H. R. 3448

To amend the Securities Exchange Act of 1934 to provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 12, 2013

Mr. DUFFY (for himself and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Securities Exchange Act of 1934 to provide for an optional pilot program allowing certain emerging growth companies to increase the tick sizes of their stocks.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Cap Liquidity  
5 Reform Act of 2014”.

1 **SEC. 2. LIQUIDITY PILOT PROGRAM FOR SECURITIES OF**  
2 **CERTAIN EMERGING GROWTH COMPANIES.**

3 (a) IN GENERAL.—Section 11A(c)(6) of the Securi-  
4 ties Exchange Act of 1934 (15 U.S.C. 78k–1(c)(6)) is  
5 amended to read as follows:

6 “(6) LIQUIDITY PILOT PROGRAM FOR SECURITIES  
7 OF CERTAIN EMERGING GROWTH COMPANIES.—

8 “(A) QUOTING INCREMENT.—Beginning on the  
9 date that is 90 days after the date of the enactment  
10 of the Small Cap Liquidity Reform Act of 2014, the  
11 securities of a covered emerging growth company  
12 shall be quoted using—

13 “(i) a minimum increment of \$0.05; or

14 “(ii) if, not later than 60 days after such  
15 date of enactment, the company so elects in the  
16 manner described in subparagraph (D)—

17 “(I) a minimum increment of \$0.10;

18 or

19 “(II) the increment at which such se-  
20 curities would be quoted without regard to  
21 the minimum increments established under  
22 this paragraph.

23 “(B) TRADING INCREMENT.—In the case of a  
24 covered emerging growth company the securities of  
25 which are quoted at a minimum increment of \$0.05  
26 or \$0.10 under this paragraph, the Commission shall

1       determine the increment at which the securities of  
2       such company are traded.

3               “(C) FUTURE RIGHT TO OPT OUT OR CHANGE  
4       MINIMUM INCREMENT.—

5               “(i) IN GENERAL.—At any time beginning  
6       on the date that is 90 days after the date of the  
7       enactment of the Small Cap Liquidity Reform  
8       Act of 2014, a covered emerging growth com-  
9       pany the securities of which are quoted at a  
10      minimum increment of \$0.05 or \$0.10 under  
11      this paragraph may elect in the manner de-  
12      scribed in subparagraph (D)—

13              “(I) for the securities of such com-  
14      pany to be quoted at the increment at  
15      which such securities would be quoted  
16      without regard to the minimum increments  
17      established under this paragraph; or

18              “(II) to change the minimum incre-  
19      ment at which the securities of such com-  
20      pany are quoted from \$0.05 to \$0.10 or  
21      from \$0.10 to \$0.05.

22              “(ii) WHEN ELECTION EFFECTIVE.—An  
23      election under this subparagraph shall take ef-  
24      fect on the date that is 30 days after such elec-  
25      tion is made.

1           “(iii) SINGLE ELECTION TO CHANGE MIN-  
2           IMUM INCREMENT.—A covered emerging growth  
3           company may not make more than one election  
4           under clause (i)(II).

5           “(D) MANNER OF ELECTION.—

6           “(i) IN GENERAL.—An election is made in  
7           the manner described in this subparagraph by  
8           informing the Commission of such election.

9           “(ii) NOTIFICATION OF EXCHANGES AND  
10          OTHER TRADING VENUES.—Upon being in-  
11          formed of an election under clause (i), the Com-  
12          mission shall notify each exchange or other  
13          trading venue where the securities of the cov-  
14          ered emerging growth company are quoted or  
15          traded.

16          “(E) ISSUERS CEASING TO BE COVERED  
17          EMERGING GROWTH COMPANIES.—

18          “(i) IN GENERAL.—If an issuer the securi-  
19          ties of which are quoted at a minimum incre-  
20          ment of \$0.05 or \$0.10 under this paragraph  
21          ceases to be a covered emerging growth com-  
22          pany, the securities of such issuer shall be  
23          quoted at the increment at which such securi-  
24          ties would be quoted without regard to the min-

1           imum increments established under this para-  
2           graph.

3           “(ii) EXCEPTIONS.—The Commission may  
4           by regulation, as the Commission considers ap-  
5           propriate, specify any circumstances under  
6           which an issuer shall continue to be considered  
7           a covered emerging growth company for pur-  
8           poses of this paragraph after the issuer ceases  
9           to meet the requirements of subparagraph  
10          (L)(i).

11         “(F) SECURITIES TRADING BELOW \$1.—

12           “(i) INITIAL PRICE.—

13                 “(I) AT EFFECTIVE DATE.—If the  
14                 trading price of the securities of a covered  
15                 emerging growth company is below \$1 at  
16                 the close of the last trading day before the  
17                 date that is 90 days after the date of the  
18                 enactment of the Small Cap Liquidity Re-  
19                 form Act of 2014, the securities of such  
20                 company shall be quoted using the incre-  
21                 ment at which such securities would be  
22                 quoted without regard to the minimum in-  
23                 crements established under this paragraph.

24                 “(II) AT IPO.—If a covered emerging  
25                 growth company makes an initial public of-

1                   fering after the day described in subclause  
2                   (I) and the first share of the securities of  
3                   such company is offered to the public at a  
4                   price below \$1, the securities of such com-  
5                   pany shall be quoted using the increment  
6                   at which such securities would be quoted  
7                   without regard to the minimum increments  
8                   established under this paragraph.

9                   “(ii) AVERAGE TRADING PRICE.—If the av-  
10                  erage trading price of the securities of a cov-  
11                  ered emerging growth company falls below \$1  
12                  for any 90-day period beginning on or after the  
13                  day before the date of the enactment of the  
14                  Small Cap Liquidity Reform Act of 2014, the  
15                  securities of such company shall, after the end  
16                  of such period, be quoted using the increment  
17                  at which such securities would be quoted with-  
18                  out regard to the minimum increments estab-  
19                  lished under this paragraph.

20                  “(G) FRAUD OR MANIPULATION.—If the Com-  
21                  mission determines that a covered emerging growth  
22                  company has violated any provision of the securities  
23                  laws prohibiting fraudulent, manipulative, or decep-  
24                  tive acts or practices, the securities of such company  
25                  shall, after the date of the determination, be quoted

1 using the increment at which such securities would  
2 be quoted without regard to the minimum incre-  
3 ments established under this paragraph.

4 “(H) INELIGIBILITY FOR INCREASED MINIMUM  
5 INCREMENT PERMANENT.—The securities of an  
6 issuer may not be quoted at a minimum increment  
7 of \$0.05 or \$0.10 under this paragraph at any time  
8 after—

9 “(i) such issuer makes an election under  
10 subparagraph (A)(ii)(II);

11 “(ii) such issuer makes an election under  
12 subparagraph (C)(i)(I), except during the pe-  
13 riod before such election takes effect; or

14 “(iii) the securities of such issuer are re-  
15 quired by this paragraph to be quoted using the  
16 increment at which such securities would be  
17 quoted without regard to the minimum incre-  
18 ments established under this paragraph.

19 “(I) ADDITIONAL REPORTS AND DISCLO-  
20 SURES.—The Commission shall require a covered  
21 emerging growth company the securities of which  
22 are quoted at a minimum increment of \$0.05 or  
23 \$0.10 under this paragraph to make such reports  
24 and disclosures as the Commission considers nec-

1        essary or appropriate in the public interest or for  
2        the protection of investors.

3            “(J) LIMITATION OF LIABILITY.—An issuer (or  
4        any officer, director, manager, or other agent of  
5        such issuer) shall not be liable to any person (other  
6        than such issuer) under any law or regulation of the  
7        United States, any constitution, law, or regulation of  
8        any State or political subdivision thereof, or any con-  
9        tract or other legally enforceable agreement (includ-  
10       ing any arbitration agreement) for any losses caused  
11       solely by the quoting of the securities of such issuer  
12       at a minimum increment of \$0.05 or \$0.10, by the  
13       trading of such securities at the increment deter-  
14       mined by the Commission under subparagraph (B),  
15       or by both such quoting and trading, as provided in  
16       this paragraph.

17           “(K) REPORT TO CONGRESS.—Not later than 6  
18        months after the date of the enactment of the Small  
19        Cap Liquidity Reform Act of 2014, and every 6  
20        months thereafter, the Commission, in coordination  
21        with each exchange on which the securities of cov-  
22        ered emerging growth companies are quoted or trad-  
23        ed, shall submit to Congress a report on the quoting  
24        and trading of securities in increments permitted by  
25        this paragraph and the extent to which such quoting



1 and trading are increasing liquidity and active trad-  
2 ing by incentivizing capital commitment, research  
3 coverage, and brokerage support, together with any  
4 legislative recommendations the Commission may  
5 have.

6 “(L) DEFINITIONS.—In this paragraph:

7 “(i) COVERED EMERGING GROWTH COM-  
8 PANY.—The term ‘covered emerging growth  
9 company’ means an emerging growth company,  
10 as defined in the first paragraph (80) of section  
11 3(a), except that—

12 “(I) such paragraph shall be applied  
13 by substituting ‘\$750,000,000’ for  
14 ‘\$1,000,000,000’ each place it appears;  
15 and

16 “(II) subparagraphs (B), (C), and (D)  
17 of such paragraph do not apply.

18 “(ii) SECURITY.—The term ‘security’  
19 means an equity security.

20 “(M) SAVINGS PROVISION.—Notwithstanding  
21 any other provision of this paragraph, the Commis-  
22 sion may—

23 “(i) make such adjustments to the pilot  
24 program specified in this paragraph as the  
25 Commission considers necessary or appropriate

1 to ensure that such program can provide statis-  
2 tically meaningful or reliable results, including  
3 adjustments to eliminate selection bias among  
4 participants, expand the number of participants  
5 eligible to participate in such program, and  
6 change the duration of such program for one or  
7 more participants; and

8 “(ii) conduct any other study or pilot pro-  
9 gram, in conjunction with or separate from the  
10 pilot program specified in this paragraph (as  
11 such program may be adjusted pursuant to  
12 clause (i)), to evaluate quoting or trading in  
13 various minimum increments.”.

14 (b) SUNSET.—Effective on the date that is 5 years  
15 after the date of the enactment of this Act, section  
16 11A(c)(6) of the Securities Exchange Act of 1934 (15  
17 U.S.C. 78k–1(c)(6)) is repealed.